

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
TENNESSEE, TENNESSEE

ANTHONY BAKER)
Plaintiff,)
BRIDGEFIELD CASUALTY)
INSURANCE COMPANY, INC.,) No. 3:22-cv-00250
Plaintiff/Intervenor)
vs.)
NYRSTAR CLARKSVILLE INC. and)
OUTOTEC (USA), INC.)
Defendants.)

MOTION TO STRIKE

Pursuant to Federal Rule of Civil Procedure 12(f), Plaintiff moves to strike portions of the Answer of Defendant Outotec (USA) Inc. (“hereinafter Outotec”). Defendant Outotec’s Affirmative Defenses contained in numbered paragraphs 3, 4, and 5 on page 11 assert that fault should be assessed to “any other persons or parties revealed in discovery” without identifying any such persons. Under substantive Tennessee law, the identification of nonparties in an answer is essential to permit a plaintiff to sue those nonparties under Tenn. Code Ann. § 20-1-119. Defendant may later amend its answer to identify someone it wishes to blame, which would allow Plaintiff to bring all proper parties before the Court. Until then, Defendant’s answer is legally insufficient.

Accordingly, Plaintiff respectfully asks the Court to strike the following language contained in bold below from Defendant Outotec’s Affirmative Defenses contained in numbered paragraphs 3, 4, and 5 on page 11 of Defendant Outotec’s Answer:

3. While denying Outotec committed any negligent or wrongful act that proximately caused or contributed to Plaintiff's damages, Outotec avers that its

alleged negligent or wrongful acts, if any, should be compared to the negligence or wrongful acts of Plaintiff, Nyrstar, John W. McDougall Co., Inc., Industrial Contractors, Inc., **and/or any other persons or parties revealed in discovery** that may be liable for the incident at issue and for whom Outotec is not responsible. Outotec further avers that such comparison may establish that the fault of Plaintiff, Nyrstar John W. McDougall Co., Inc. Industrial Contractors, Inc. **and/or any other persons or parties revealed in discovery** was equal to or greater than the fault of Outotec, thus barring or reducing Plaintiff's recovery, if any.

4. The damages alleged in the First Amended Complaint were caused solely by the superseding, intervening acts and conduct or (sic) Plaintiff, Nyrstar, John W. McDougall Co., Inc., Industrial Contractors, Inc., **and/or any other persons or parties revealed in discovery** which intervened between Outotec's alleged acts and Plaintiff's claimed damages over whom Outotec exercised no control.

5. Plaintiff's damages, if any, were caused in whole or in part by Plaintiff's employer's failure, Nyrstar's failure, John W. McDougall Co., Inc.'s failure, Industrial Contractors, Inc.'s failure, **and/or some other person or party's** failure to provide warnings or instruction to Plaintiff about any hazards associated with the project that is the subject of this litigation.

Respectfully submitted,

/s/ Elizabeth Sitgreaves

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CERTIFICATE OF SERVICE

This is to certify that, on May 11, 2022, a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by U.S. mail. Parties may access this filing through the Court's electronic filing system.

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/s/ Elizabeth Sitgreaves
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